IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 284 of 2004.

Decided on:26.4.2007.

Shri Ishwar Dass Sood.

… … … Petitioner.

Versus

H.P. Vidhan Sabha and others.

… … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting? Yes.

For the Petitioner (s):	**Mr. Anand Sharma, Advocate.**
For Respondent No.1:	**Mr. Arvind Sharma, Advocate.**
For Respondent No.2:	**Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Ms. Meenakshi Sharma, Dy. Advocates General.**
For Respondent No.3:	**Mr. Sandeep Sharma, Asstt. Solicitor General of India.**

Rajiv Sharma, Judge (Oral):

By medium of this petition, the petitioner has sought the following relief(s):-

(a) Office order dated 24.3.1999 (Annexure PL) and 30.10.2003 (Annexure PS) issued by the State Government may kindly be quashed and set aside.

Whether reporters of local papers may be allowed to see the judgment? Yes.

(b) That respondents may kindly be directed to compute the special pay towards pension at the time when the petitioner retired.

(c) That the respondents be directed to amend the definition of 'emoluments' and 'pay' in the fundamental rules as it existed at the time when the petitioner retired.

(d) That the respondents be directed to take follow up action in terms of clarification issued by the State of Punjab vide letter dated 10.8.1999(Annexure PN).

(e) That the respondents be directed not to discriminate the petitioner who is a pre-1986 retiree with those of the post-1986 retirees and be held entitled to same and similar benefits as are given to the post-1986 retirees.

The brief facts necessary for adjudication of this petition are that as per instructions prevalent at the time of retirement of the petitioner on average emoluments of Rs.1982/-, his pension was worked out at Rs.723/- per month according to the slab formula applicable at that time and accordingly he was authorized pension at the rate of Rs.723/- per month vide letter No. Pen. III/Revision/PPO No.11392/HP/1-5/83-84/13470-73, dated 7.12.1984 (Annexure PC) by the Accountant General, Himachal Pradesh, Shimla. The petitioner started receiving the pension strictly on the basis of Annexure PC, but after recommendation of the Fifth Pay Commission, the Government ordered the regulations of pensionary benefits to the pre-1986 retirees vide instruction contained in Finance Department O.M. No. Fin (Pen) A(3)-1/96-Part-III dated 31st August, 1998 read with clarification issued vide O.M. No. Fin (Pen) A(3)-1/98-III dated 24.3.1999 (Annexures PK and PL) whereby the special pay admissible/attached with the revised pay scale as on 1.1.1986 was not to form part of reckonable emoluments for revising the pension. In sequel to

the two communications dated 31.8.1998 and 24.3.1999 petitioner's pension was revised by respondent No.3 vide letter No. Pen. Cell/Pre-1986-9-5/83-84/579-21 dated 12.5.1999 (Annexure R-1).

It appears from the pleadings that the petitioner had also approached this Court by way of CWP No.1213 of 2001 aggrieved by the issuance of Annexure R-1. The said writ petition was decided by this Court on 26.6.2003.

In sequel to the decision of this Court, a decision has been taken by the Principal Secretary (Finance) which was addressed to the Secretary (GAD) on 30.10.2003. This communication has been placed on record of this petition vide Annexure R-2. It is mentioned therein that the pension of Himachal Pradesh Government pensioners is determined under CCS(Pension) Rules, 1972, whereas the pay scales of Himachal Pradesh State employees are based on the Punjab pattern. It is further mentioned therein that although the pay scales of Himachal Pradesh employees are based on Punjab pattern, yet the reckonable emoluments for the purpose of pension is drawn according to CCS(Pension) Rules, 1972 and Fundamental Rules. In the communication, dated 30.10.2003 there is reference of two letters, i.e. O.M. No.45/86/97-P&PW(A) Part-III dated 19.3.1999 and O.M. No. Fin(Pen)A(3)-1/98 dated 24.3.1999 whereby it has been conveyed that the special pay is not to be treated as emoluments for the purpose of computation of pension on the basis of pay fixed on notional basis in respect of pensioners who have retired on or after 1.1.1986 and have opted for revised pay scales. The copies of these two office memorandums are placed on record vide Annexures R-1 and R-2 by

respondent No.2. The expression 'pay' as mentioned in office memorandum dated 19th March, 1999 is reproduced as under:-

> **"'Pay means the amount drawn monthly by a Government servant as**
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> **i) the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre."**

Similarly the relevant portion of office memorandum dated 24th March, 1999 dealing with the aspect of special pay is reproduced below for proper appreciation of the fact:-

> **"References have, however, been received from various quarters seeking clarification regarding counting of special pay admissible/attached with the revised pay scales as on 1.1.1986 for reckoning the emoluments for the purpose of updating pension on 1.1.86, in addition to notional pay arrived at. The point raised has been examined and it is clarified that special pay admissible/attached with the revised pay scale as on 1.1.86 is not to form part of reckonable emoluments for revising pension on 1.1.86. Notional pay arrived at as on 1.1.86 only shall be treated as average emoluments for the purpose.**
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> **All Departments/Heads of offices are requested to revise such cases accordingly at their earliest."**

Mr. Anand Sharma appearing on behalf of the petitioner submits that the right of the petitioner to get pension has crystallized on the basis of Annexure P-C on 7th December, 1984. He further contends that the petitioner has acquired a vested right to get the pension as per Annexure PC and the same cannot be impaired by subsequent issuance of

Annexures PK and PL as well as office memorandums dated 19th March, 1999 and 24th March, 1999.

Learned counsel appearing on behalf of the respondents has supported the decision which has led to the issuance of Annexure R-1 dated 12.5.1999.

I have perused the record carefully and also heard the parties.

It is evident from Annexure P-C that the petitioner's pension was worked out according to the slab formula applicable at that time and the petitioner started enjoying the benefits of pension. At the time when the pension of the petitioner was worked out, the special pay was taken into consideration. The office memorandums, i.e. Annexure PK and PL have been issued subsequently, i.e. on 31st August, 1998 and on 24.3.1999. It has come in the communication dated 30.10.2003 that the pension of Himachal Pradesh Government pensioners is determined under the Central Civil Services (Pension) Rules, 1972, whereas the pay scales of Himachal Pradesh State employees are based on the Punjab pattern meaning thereby the pay scales of Himachal Pradesh State employees are based on Punjab pattern, but the reckonable emoluments for the purpose of pension is drawn according to CCS(Pension) Rules, 1972. Mr. Anand Sharma has drawn the attention of this Court to the communication issued by the Punjab Government dated 10.8.1999 whereby as per para 2 the special pay, actually drawn by pensioner at the time of his/her retirement is to be counted for computing pension for calculating the pensionary benefits in respect of pre-1986 retirees.

There are two issues which need consideration of this Court on the basis of material placed on record by the respective parties. First and

foremost is whether the rights which have accrued to the petitioner on the basis of Annexure PC can be taken away by applying Annexures PK, PL and R-2/A and R-2/B, respectively. The second question requiring consideration is whether the State was right in not counting the special pay for determining the petitioner's pension on the basis of Central Civil Services (Pension) Rules, 1972 or was bound to count the same as per the decision of the Punjab Government. It is settled law that the amendment carried out in the Act or the Rules should not impair the accrued/vested rights.

Hon'ble Supreme Court in **Chairman, Railway Board and Others versus C.R. Rangadhamaiah and Others (1997) 6 SCC 623** has held:-

> **"Apart from being violative of the rights then available under Article 31(1) and 19(1)(f), the impugned amendments, insofar as they have been given retrospective operation, are also violative of the rights guaranteed under Articles 14 and 16 of the Constitution on the ground that they are unreasonable and arbitrary since the said amendments in Rule 2544 have the effect of reducing the amount of pension that had become payable to employees who had already retired from service on the date of issuance of the impugned notifications, as per the provisions contained in Rule 2544 that were in force at the time of their retirement.**

Similarly Hon'ble Supreme Court in **U.P. Raghavendra Acharya and Others versus State of Karnataka and Others (2006) 9 SCC 630** has held that reduction of pension with retrospective effect would be violative of Articles 14 and 16 of the Constitution. Your Lordships have opined as under:-

> **"As the amount calculated on the basis of the revised scales of pay on and from 1-1-1996 to 31-3-1998 has not been paid to the appellants by the State of Karnataka as ex gratia, and in fact was paid by way of emoluments to which the appellants became entitled to in terms of their conditions of service, which in turn are governed by the statutory rules, they acquired a vested right therein. If the appellants became entitled to the benefits of the revised scales of pay, and consequently to the pension calculated on the said basis in terms of the impugned rules, there would be reduction of pension with retrospective effect which would be violative of Articles 14 and 16 of the Constitution of India.**
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> **The appellants had retired from service. The State therefore could not have amended the statutory rules adversely affecting their pension with retrospective effect."**

Your Lordships of Supreme Court have also held that since the appellants have retired from service, the State could not have amended the statutory rules adversely affecting their pension with retrospective effect.

The answer to the first question posed above is that the petitioner's pension once worked out in the year 1984 by including the special pay could not be reduced on the basis of subsequent notifications, more particularly when the petitioner has retired from service.

Now for deciding the second issue, it is necessary to take into consideration few facts. The special pay has been included in the salary for determining the pension which accordingly was paid to the petitioner in the year 1984. The Government employees in the State of Himachal Pradesh including of respondent No.1 Vidhan Sabha are paid salaries as

per the pay scales paid to their counter parts in the State of Punjab. So far as the State of Punjab is concerned, a conscious decision has already been taken by it to include the special pay for the purpose of working out the pension to its employees. The stand of the respondents is that the pension is to be worked out on the basis of Central Civil Services (Pension) Rules, 1972 and the pattern of Punjab Government is not followed. I am of the opinion that once the pay scales at par with Punjab Government employees are being paid to the employees of the H.P. Government, there is no reason why the same pattern should not be followed for the release of pension instead of relying upon the Central Civil Services (Pension) Rules, 1972. No convincing or cogent reasons have been assigned by the respondents in their replies why the Punjab pattern should not be followed for determining the pension instead of relying upon Central Civil Services (Pension) Rules, 1972.

The meaning given to 'pay' as mentioned in Annexure R2-A, dated 19th March, 1999 and reiterated in office memorandum dated 24th March, 1999, i.e. Annexure R2-B are arbitrary and violative of Article 14 of the Constitution of India and are liable to be quashed and set aside. The petitioner's pension has been worked out including his special pay in the year 1984 and by giving different meaning to 'pay' the same cannot be reduced.

Consequently, this petition is allowed and office orders dated 19.3.1999 and dated 24.3.1999 (Annexures R2-A and R2-B) alongwith Annexure R-1 dated 12.5.1999 are quashed and set aside. The respondents are directed to restore the pension of the petitioner as per Annexure P-C. The respondents are further directed to release the arrears

of pension to the petitioner with interest at the rate of 12% per annum. There shall be no order as to costs.

(Rajiv Sharma)
Judge

April 26, 2007.
(sck)